IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

WEDNESDAY, THE 30TH MAY 2007 / 9TH JYAISHTA 1929

WP(C).No. 20994 of 2003(Y)

PETITIONER:

M/S.HOUSE OF PLASTIC, A REGISTERED PARTNERSHIP FIRM REPRESENTED BY ITS PARTNERS. (1) P.K.JOSE,AEGED 50 YEARS S/O. KOCHUVARKEY AND (2) P.J.SEEJO, AGED 28 YEARS S/O. JOSE - BOTH ARE RESIDING AT PONOORE HOUSE, PAVARTY, THRISSUR DISTRICT.

BY ADV. SRI.V.R.KESAVA KAIMAL
SRI.N.M.MADHU

RESPONDENTS:

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1. MARTIN C.GOMEZ, AGED ABOUT 48 YEARS, PROPRIETOR OF M/S.FLEXY PIPES, MARUTHADI ROAD, KOLLAM-691 003, RESIDING AT FLAT NO.3, PB.NO.236, PARAMESWARA PILLAI BHAVAN, OPPOSITE HOTEL SUDHARSAN, KOLLAM-691 001.

2. M/S.CHEMPLAST SANMAR LIMITED (FORMERLY M/S.CHEMICALS & PLASTICS LIMITED COMPANY, HAVING REGISTERED OFFICE AT NO.8, CATHEDRAL ROAD, MADRAS 600 086, REPRESENTED BY P.VASUDEVAN, GENERAL MANAGER - LEGAL.

R1 BY ADV. SRI.K.BAHAVADASAN.

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 30/05/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON I.A.NO.7894 OF 2003 IN W.P.C.NO.20994 OF 2003

DISMISSED.

30.5.2007 SD/- PIUS C.KURIAKOSE, JUDGE.

APPENDIX(WPC 20994/03)

PETITIONER'S EXTS.:

EXT.P1: TRUE COPY OF THE PLAINT IN O.S.230/97 ON THE FILES OF THE SUBORDINATE JUDGE'S COURT OF THRISSUR.

EXT.P2: TRUE COPY OF THE WRITTEN STATEMENT FILED BY THE 1ST RESPONDENT TO EXT.P1 PLAINT.

EXT.P3: TRUE COPY OF THE AFFIDAVIT AND PETITION I.A.2884/98 IN O.S.230/97 ON THE FILES OF SUBORDINATE JUDGE'S COURT, THRISSUR.

EXT.P4: TRUE COPY OF THE OBJECTIONS FILED BY THE 1ST RESPONDENT TO EXT.P3 APPLICATION.

EXT.P5: TRUE COPY OF THE ORDER DATED 9.10.02 IN I.A.2881/98 IN O.S.230/97 ON THE FILES OF SUBORDINATE JUDGE'S COURT, THRISSUR.

EXT.P6: TRUE COPY OF THE ORDER DATED 9.10.02 IN I.A.2884/02 IN O.S.230/97 ON THE FILES OF SUBORDINATE JUDGE'S COURT, THRISSUR.

EXT.P7: TRUE COPY OF THE AFFIDAVIT AND PETITION IN I.A.4735/02 IN O.S.230/97 ON THE FILES OF SUBORDINATE JUDGE'S COURT OF THRISSUR.

PIUS C. KURIAKOSE,J.

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W.P.(C) No. 20994 of 2003

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Dated: 30th May, 2007

JUDGMENT

Ext.P6 order passed by the trial court on an application for impleadment and Ext.P5 order dismissing an application for consequential amendments are under challenger in this proceeding under Article 227 of the Constitution initiated by the original plaintiff. The original plaintiff was a partnership firm by name 'M/s.House of Plastic' and in the light of a contention raised by the 1st respondent, the sole defendant that there is no privity of the contract between the original plaintiff and the defendant and that the privity if at all is there only between him and the 2nd respondent, the two interlocutory applications were filed by the petitioner. It was claimed by the petitioner that they have the concurrence of the 2nd respondent to come on record as a co-plaintiff since the plaintiff was their own consignment agent. The learned Subordinate Judge dismissed both the applications taking the view that by allowing the applications, the nature and character of the suit will change and that the petitioner, the original plaintiff had no local standi at all to institute the suit. If a suit is filed by the 2nd respondent who may be having local standi, the same will be barred by limitation. Therefore, according to the learned

Subordinate Judge grant of the applications will cause prejudice to the 1st respondent since the same will enable the petitioner and the 2nd respondent to bye-pass the bar of limitation.

2. Even though as directed by this court copy of the Writ Petition was served on the Advocate appearing for the 1st defendant in the court below, he has not entered appearance before this court for resisting the prayers in the Writ Petition. The 2nd respondent, the prospective additional plaintiff is also not opposing the prayers in the Writ Petition.

3. Making submissions on the basis of the various grounds raised in the Writ Petition Mr.V.R.K.Kaimal, learned counsel for the petitioner invited my attention to the judgment of this court in **Kelankutty v. Nayadi** (1989(1) KLT 62) and also that of the Supreme Court in **Bal Niketan Nursery School v. Kesari Prasad** (AIR 1987 S.C. 1970). Order 1 Rule 10 enables the court to allow substitution of parties and also to add parties if it is seen that the plaint has been instituted in the name of a wrong person. In fact Order 1 Rule 10(2) provides that the court is competent to strike out and to add parties if it is found that the presence of a given party is necessary or unnecessary for effectually and completely adjudicating

upon and to settle all the questions involved in the suit. It should be remembered that it was on the basis of a contention raised by the 1st respondent that the petitioner filed the application for impleadment. It was not disputed that the original plaintiff was the consignment agent of the prospective additional plaintiff and actually dealt with the 1st respondent in that capacity. The suit instituted by the petitioner would certainly have been defeated on the technical reason that there is no privity between the petitioner and the 1st respondent to identify that the suit could have been branded as a frivolous one. The issue in my view is covered by the judgment of this court in **Kelankutty v. Nayadi** (supra) rendered by a learned Judge following the principles laid down by the Supreme Court in **Bal Niketan Nursery School v. Kesari Prasad** (supra). The point which is seriously noticed by the learned Subordinate Judge is that the proposed impleadment which is the result of amending the suit may enable the plaintiff to by-pass the bar of limitation. In fact in **Kelankutty v. Nayadi** (supra) this court directed consideration of the question of limitation independently.

4. The result of the above discussion is that the Writ Petition will stand allowed. Exts.P5 and P6 are set aside and I.A.Nos.2881 of

1998 and 2884 of 1998 will stand allowed. The first respondent will be permitted by the learned Subordinate Judge to raise additional pleadings if so advised contending that the suit is barred by limitation. The issue of limitation will be decided by the learned Subordinate Judge without being influenced by the circumstance that Exts.P5 and P6 were set aside by this court.

srd **PIUS C.KURIAKOSE, JUDGE**